

STATE OF MICHIGAN
COURT OF APPEALS

LOOKING GOOD LAWNS, LLC,

Plaintiff-Appellant,

UNPUBLISHED
January 10, 2012

v

SECURA INSURANCE COMPANY,

Defendant-Appellee.

No. 301805
Washtenaw Circuit Court
LC No. 09-001375-CK

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant. We affirm.

I. FACTS AND PROCEDURAL HISTORY

The basic facts are not in dispute. Plaintiff, a lawn care and landscaping company, intended to apply a selective herbicide to the lawns of several customers for the purpose of eliminating weeds in those lawns. However, plaintiff mistakenly applied a non-selective herbicide that destroyed the grass in the lawns. Plaintiff incurred substantial expense for the restoration of the lawns.

At the time of the incident, plaintiff was insured under a “Businessowners Policy” and a limited pesticide or herbicide applicator coverage endorsement issued by defendant. After defendant denied coverage, plaintiff filed this lawsuit seeking a declaration that the herbicide endorsement provided coverage to include the mistaken herbicide application and that the policy exclusions relied on by defendant to deny coverage did not apply. Plaintiff also sought damages for breach of contract. Defendant moved for summary disposition, asserting in part that plaintiff’s claim was barred under two property damage exclusions contained in the policy. Defendant also asserted that the herbicide endorsement did not override these policy exclusions.

The trial court issued an opinion granting defendant's motion for summary disposition.¹ The court first found that coverage was barred under Exclusion (k)(5) because plaintiff was performing operations on real property and that the property damage was to the real property on which plaintiff was performing operations and arose directly out of those operations. The court also found that coverage was barred under Exclusion (k)(6) because the damage was to property that had to be replaced because plaintiff's work was incorrectly performed on it. Lastly, the court found that the herbicide endorsement did not create coverage where coverage was excluded by the "your work" exclusions in the policy.

II. STANDARD OF REVIEW

On appeal, a trial court's decision whether to grant a motion for summary disposition is a question of law that is reviewed de novo. *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007). The motion is properly granted when the proffered evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 552. A genuine issue of material fact is found to exist "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). The interpretation of an insurance contract is a question of law that is reviewed de novo on appeal. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

III. ANALYSIS

Plaintiff first argues that the trial court erred by granting summary disposition in favor of defendant on the ground that the "your work" exclusions in the insurance policy issued by defendant to plaintiff precluded coverage for the property damage to plaintiff's customers' lawns.

This Court summarized the guidelines for interpreting insurance policies and exclusionary clauses in *Century Surety Co v Charron*, 230 Mich App 79, 82–83; 583 NW2d 486 (1998):

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566–567; 489 NW2d 431 (1992). When determining what the parties' agreement is, the court should read the contract as a whole and give meaning to all the terms contained the policy. The court must give the language contained in the policy its plain and ordinary meaning so that technical and

¹ Initially, we note that the trial court found that "the mistaken use of the wrong herbicide is an 'accident'" and, therefore, an occurrence under the policy. Defendant has not cross-appealed this ruling.

strained constructions are avoided. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). If an insurance contract sets forth definitions, the policy language must be interpreted according to those definitions. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997). Where the language of an insurance policy is clear and unambiguous, it must be enforced as written.

Exclusionary clauses in insurance policies are strictly construed in favor of the insured. Coverage under a policy is lost if any exclusion in the policy applies to an insured's particular claims. Clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume. [Citations omitted.]

The “Your Work” Exclusions

Section B of the insurance policy provides exclusions to business liability coverage. Paragraph (1) of Exclusion k. -- the “property damage” exclusion -- excludes insurance coverage for property damage to:

(5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the “property damage” arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

“Your work” is defined in the policy, in part, as “Work or operations performed by you or on your behalf.”

According to the undisputed facts, plaintiff applied the non-selective herbicide to its customer's lawns, which would constitute “your work” under Exclusion (k)(5). Moreover, according to Exclusion (k)(6), any repair, restoration, or replacement of a lawn, which is a result of plaintiff's work, falls within the exclusion outlined in the policy. Plaintiff's application of non-selective herbicide to its customers' lawns is within the clear and unambiguous exclusion as detailed in the policy. Plaintiff's argument that the particular piece of real property on which it was working was the foliage of the weeds in the lawn, as opposed to the root system of the grass, is disingenuous. Plaintiff applied the non-selective herbicide to its customers' lawns. Accordingly, the particular part of the real property on which plaintiff performed operations was, indeed, the lawn. Similarly, the particular part of the property that had to be restored, repaired, or replaced as a result of the incorrect application of non-selective herbicide was the lawn. According to the exclusionary language in the policy, plaintiff's actions of inadvertently spraying the lawn with a non-selective herbicide bars recovery of insurance proceeds as a matter of law.

The Herbicide Endorsement

Paragraph (d)(i) of Exclusion (f) of the insurance policy -- the “pollution” exclusion -- specifically excluded coverage for bodily injury or property damage arising out of the “actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants”:

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations:

(i) If the pollutants are brought on or to the premises, site, or location in connection with such operations by such insured, contractor or subcontractor.

Under the herbicide endorsement, paragraph (d)(i) of the pollution exclusion “does not apply if the operations meet all standards of any statute, ordinance, regulation or license requirement of any federal, state, or local government which apply to those operations.” The plain and unambiguous language of the herbicide endorsement provides that paragraph (d)(i) of the *pollution* exclusion in the insurance policy does not apply in the described circumstances. The herbicide endorsement does not alter, change, or affect the “*your work*” exclusion that precludes plaintiff from coverage given the facts in this case.² The trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

² The property damage in this case was not caused by the “actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of pollutants.” Rather, the property damage was caused by plaintiff’s mistaken application of a non-selective herbicide to the lawns.